Solid Waste Services, Inc., d/b/a J. P. Mascaro & Sons, Inc. *and* International Union of Operating Engineers, Local Union No. 832. Case 3–CA–17063

November 24, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On May 11, 1993, Administrative Law Judge Harold Bernard Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Solid Waste Services, Inc., d/b/a J. P. Mascaro & Sons, Inc., Rochester, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Doren G. Goldstone, Esq., for the General Counsel.
James R. LaVaute, Esq., of Syracuse, New York, for the Charging Party.
Mark S. Shiffman, Esq., of Pittsburgh, Pennsylvania.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD JR., Administrative Law Judge. I heard this case in Rochester, New York, on January 11 and 12, 1993, following a charge filed April 30 and a complaint issued July 31, 1992, alleging that Respondent, as a successor employer to Laidlaw Waste Systems, violated Section 8(a)(5) of the Act by refusing to recognize and bargain with the Union, the established bargaining representative for employees in the former Laidlaw unit.

By answer to complaint Respondent alleged that at no material time did it employ a majority of employees who previously worked for Laidlaw, in an appropriate unit, but rather that its work force consists of its own directly employed employees as well as employees jointly employed by Respondent and others. Respondent at trial and on brief elaborated to contend that on commencing Laidlaw's former operations in January 1992 it became a joint employer for the work involved with Silvarole Trucking Company over former Laidlaw unit employees hired directly by Respondent, but also over a larger number of Silvarole employees such that the Union, when it made its demand for recognition did not represent a majority of Respondent/Silvarole employees in the substantially enlarged combined appropriate unit, thereby foreclosing Respondent's bargaining obligation under the Act.

Based on the entire record laudably shortened by the parties' welcome stipulations, including helpful briefs filed by counsel, and the witnesses' demeanor on the stand, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Pennsylvania corporation engaged in transporting municipal and commercial waste products from a facility located in Rochester, New York, to points outside New York for which services it annually receives in excess of $50,000. Annually, Respondent purchases products valued in excess of $50,000 directly from points outside the State of New York. I find, as admitted, that Respondent is an employer engaged in commerce as defined in the Act. The Union is admittedly a labor organization as defined in the Act.

II. UNFAIR LABOR PRACTICE

A. *Background*

Monroe County in New York State maintains a solid waste transfer facility used to receive trash delivered there by private and municipal trash collectors, including the city of Rochester where the facility is located at 1845 Emerson Street. The facility is used to both recycle some trash and for temporary storage prior to shipment by the use of a truck hauling contractor to a landfill where it is dumped.

The Union began representing employees involved in hauling trash from this location 15 years ago, and continued representing units of such employees after the county facility as it is now constituted came into existence around 1982. Thus, the Union represented a unit of employees there employed by Browning-Ferris Industries and thereafter became party to a collective-bargaining agreement covering unit employees with Laidlaw Waste Systems, effective May 1, 1987, through December 31, 1991.

B. *The Laidlaw Unit*

The Laidlaw unit represented by the Union consisted of drivers who transported the trash by tractor trailers from the facility to a landfill, spotters who jockeyed trailers between the outdoor staging area and the loading area inside the facility, mechanics and helpers, front end loader operators who loaded trash into the trailers, truck washers, and floor attendance utility laborers, some 40 employees. (G.C. Exh. 13.) These employees comprised the Laidlaw unit as of December 31, 1991, and it is undisputed that both with respect to Browning-Ferris and, later, Laidlaw the employees in the unit at the facility were all employees of these employers alone during their respective consecutive separate tenures, although it was commonplace for Browning-Ferris and afterward Laidlaw to hire subcontractors during excess demand periods in operations; in fact, Laidlaw subcontracted some such driver work to Silvarole Trucking Company. (G.C. Exh. 4a.) Such subcontractor's employees were not included in the unit.

As the expiration in Laidlaw's contract with Monroe County drew closer, the county opened bidding for a new

contract to cover services to be provided at its facility for the future period January 1, 1992, to December 31, 1993, plus a 1-year option, and issued specifications pertaining thereto governing the work. It is instructive to note, as more fully addressed below, that the specifications carefully set forth rules concerning the successful bidding contractor's use of subcontractors. (G.C. Exh. 4a.) Respondent prevailed over other businesses in the bidding and signed an agreement with Monroe County on September 25, 1991.

C. *The Parties' Stipulations*

1. First

The parties agree that when Respondent's hiring of employees to perform work under the new contract was complete as of January 30, 1992, Respondent directly employed 19 employees in the unit as described in paragraph 8B of the amended complaint, 13 of whom had worked for Laidlaw, the predecessor employer at that location (the facility here). I note parenthetically that there is no allegation before me that the Respondent failed to directly hire more of Laidlaw's employees for discriminatory reasons and, without intending to make an express finding thereto, I note further that the General Counsel on brief at least seemed to concede business reasons behind the reduced number of employees directly hired by Respondent compared to the larger number of employees in the Laidlaw unit.

2. Second

Their second stipulation is that the circumstances attendant to Respondent's assumption of Laidlaw's work establishes a substantial continuity in the employing industry, including, but not limited to, continuity in the business operation (the record shows there was no hiatus in operations), facility, jobs and working conditions, machines, equipment, methods of production, and services. (The record also shows that Laidlaw had a similar contract with the county for transferring and hauling waste as was awarded Respondent.)

3. Third

The parties agree that the (*19*) employees directly employed by Respondent as set forth in paragraph 8B of the amended complaint share common wages, hours, benefits, supervision, and other terms and conditions of employment, and that but for (*the exclusion of*) employees of Silvarole Trucking whom Respondent contends are jointly employed (*by Respondent and Silvarole and should be included in the unit*), Respondent stipulates that this would be an appropriate unit. (The above-italized matter was added by me.)

The reference to Respondent's qualified agreement in stipulation 3 is to the fact that Respondent had by agreement dated September 1, 1991, arranged with Silvarole to provide hauling services as an independent contractor and ''*to haul such loads as are made available by Respondent*.'' (Emphasis added.) (G.C. Exh. 8.) Respondent also signed an agreement with Kephart Trucking Co. as an independent contractor for the same purposes, but later used its services and those of a third subcontractor, D & M, only briefly and does not assert a joint employer status as to either of those companies in this case. It is to the Silvarole employees who perform driving and mechanical work for Respondent that Respondent's qualification is directed, for it contends they should be included in the appropriate unit, thereby dissipating the Union's majority when the Union requested recognition and precluding Respondent's duty to bargain. Thus, Respondent argued on brief that Silvarole supplied to Respondent at least 6 drivers and 6 mechanics jointly employed by the 2 firms, so that when combined with Respondent's directly employed 19 employees for a complement of 31, the 13 employees formerly employed by Laidlaw and represented by the Union failed to constitute a majority of the newly emerged unit of Respondent/Silvarole employees. (R. Br. 11.) It is agreed that the Respondent denied the Union's letter request for recognition dated January 30, 1992. (G.C. Exh. 11.)

After Respondent took over, it directly hired 19 employees in the classifications of drivers, spotters, maintenance, loaders, laborers, and floor attendants (G.C. Exh. 14), and the process at the transfer facility itself remained virtually the same as when Laidlaw had the contract (except for the Laidlaw supervisors no longer being present), including the dumping of trash there by various collectors not involved in this case after being first weighed at a scale house,[1] the removal into trailers by a loader, and the tarping and weighing of the trailer which was then moved to a staging area to await hookup with a tractor and delivery to a disposal site 52 miles away. Respondent runs the operation at the transfer facility, employs the scale house operator, and assigns work to drivers assuring its drivers of at least two loads daily. Basically the balance of tonnage left is assigned to the subcontractor employees. There is no representative of Silvarole at the facility; its operations manager assigns work to Silvarole drivers after telephone calls from Respondent officials at the facility regarding Respondent's needs.

D. *Respondent's Agreement with Silvarole*

Respondent secured Silvarole if necessary to provide trash hauling services as Respondent saw fit to provide excess loads Respondent couldn't handle with its own employees, those that is, which it had directly hired from the former Laidlaw unit, in the contract with Silvarole described above. In the contract Silvarole is expressly identified as serving as an independent contractor to Respondent in several references. (G.C. Exh. 8, par. 11, p. 5; and pars. 1, 2, and 6.) Likewise relevant in defining their business relationship is the agreement provisions requiring Silvarole to hold Respondent harmless from liability for action by the subcontractor's employees at page 4, paragraph 10, and disclaiming representations or any guarantees of hauling work for Silvarole. Supra. (Par. 2.) As also noted above, Respondent used all three subcontractors in early 1992 to haul trash (Silvarole, Kephart, and D & M), the use of such independent contractors being customary in the past at the facility to handle excess trash hauling needs.

In a separate memorandum agreement, Silvarole agreed to furnish Respondent maintenance services on Respondent's tractors, trailers, and miscellaneous vehicles and equipment used by Respondent at the transfer facility in lieu of rent in a building at 1187 Brighton Henrietta Town Line Road (1187 building) Respondent had leased from the owner there.

[1] Respondent's scale house operators were not part of the Laidlaw unit and are likewise excluded from the unit here by stipulation.

Under the agreement, Silvarole uses the building for maintenance work, pays for its own supplies for repair of its equipment, and parks its own equipment there at the lot. Respondent provides its own parts and materials, pays Silvarole for heavy repairs at an hourly rate, and handles its own warranty covered repairs, with Silvarole providing labor for routine maintenance and general repairs including tire repair. (G.C. Exh. 9.) Although road calls by Silvarole mechanics to the facility to repair vehicles there are covered by the agreement, other road calls within a 35-mile radius of the transfer facility are billed by Silvarole to Respondent based on 1-1/2 times the Silvarole mechanics' hourly rate plus 25 cents a mile and, if needed, a $50 towing charge.

It is clear from the agreements and the record that neither confers authority on Respondent over the labor relations of Silvarole employees and that the rent for the maintenance services' arrangement was made at arm's length. There was no documentary proof introduced at trial to the contrary. Respondent's general manager, Patrick Hourihan, once spoke to a subcontractor's driver about something he ''didn't like'' but admitted there was nothing in writing giving Respondent the right or authority to in any way supervise Silvarole drivers at the facility or elsewhere.

It is also true that the two firms maintain separate personnel records for their employees at separate locations though both use space at the 1187 building area where Respondent's drivers punch in and report to park equipment. Hourihan testified he was unaware as to whether the Silvarole employees were required to punch in or out, whether Silvarole drivers were assigned more than one run a day, and whether Silvarole—which operates other business elsewhere—earmarked certain equipment for the Respondent-requested runs. He further admitted that Respondent had no role in requesting drivers from Silvarole by name or in keeping track of such drivers' names, and that the Respondent and Silvarole drivers only operate the equipment separately owned by their respective employers. In addition, it is undenied that Respondent's employees are subject to different safety, bonus, general work, accident, and reporting procedures than Silvarole applies to its own employees, and that memorandums on these subjects from Respondent went only to Respondent's employees. Memorandums on the need for accurate recording of information needed by the scale house—where all drivers report—intended for all independent contractor drivers were twice prepared and left in a stack at the scale house. There was no other correspondence relating to labor relations between Respondent and Silvarole according to Hourihan. It is reasonably inferable from Hourihan's testimony that he and therefore Respondent had nothing to do with the personnel decisions and personnel policies of Silvarole governing the Silvarole employees. Hourihan stated that as long as Silvarole attended Respondent's needs it was the end of his concern.

In addition to the foregoing, the record shows even further diversity between the employees' employment interests at each company.

Thus, Respondent pays its drivers an hourly rate of pay for a 40-hour week which they can reasonably count on working, but Silvarole drivers are paid only on a per load basis and Respondent first sees to it that its own drivers are assigned loads before deciding on whether to call on Silvarole to help out. Each driver group is covered by different insurance, Silvarole employees receive no retirement or sick pay unlike Respondent's employees who receive other benefits not granted Silvarole employees. Only 25 percent of Silvarole's work is devoted to Respondent's needs, and drivers for Silvarole, unlike Respondent, divide their duties between Respondent's operations at the trash facility and duties elsewhere; also there is no clearly identifiable or preassigned core group of Silvarole drivers used by Respondent so that their daily contact with Respondent's employees is limited and sporadic both for that reason and because there is no drivers' room at the facility or opportunity for such at the transfer station, where the loaded trailers are ready for delivery as drivers arrive.

The record also shows regarding the maintenance agreement that although Respondent's maintenance manager George Lazar prioritizes work needed by Respondent, that is, governed by Respondent's needs, and sets a schedule for the mechanical work to be performed, he gives the schedule to the Silvarole-employed lead mechanic at the 1187 building who assigns the work to a Silvarole mechanic that he chooses. Lazar is not a mechanic and performs solely administrative work at the 1187 building; Hourihan could not recall ever seeing Lazar make such assignments personally. There are separate timecard racks for the mechanics and drivers and Silvarole makes up the payroll for its own employees. It is true that Respondent's operations manager at the transfer facility may, on occasion, call for a mechanic to do repair work there as provided for in the maintenance agreement, but no Respondent direction or supervision over the mechanic while there is shown in the record. Moreover, the reference to Hourihan's fleeting and slight contact with Silvarole Owner Neil Silvarole concerning hiring of a mechanic on two occasions was in one instance based on Hourihan's alleged indirect possible knowledge concerning the mechanic's qualifications and was not shown to have been effected without Silvarole's independent review, and the other involved an instance when Silvarole sought Hourihan's help in finding a mechanic when Silvarole needed one. In neither case was there demonstrated anything but a wholly voluntary effort by Silvarole to seek help to locate a mechanic. These occurrences, like other examples of the two companies working together, manifest, in my view, nothing more than natural cooperation between a contractor and its subcontractor.

E. *Analysis*

1. Successorship

The central issue in this case is whether Respondent became a successor to Laidlaw under Board law and thus assumed the duty to recognize and bargain with the Union, which enjoyed a presumption of majority support from its former contract with Laidlaw covering employees hired by Respondent. *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 41–43 (1987).

In a highly definitive decision on the law in such cases the Board stated that (*Hydrolines, Inc.*, 305 NLRB 416, 421 (1991)):

> An employer, generally, succeeds to the collective-bargaining obligation of a predecessor if a majority of its employees, consisting of a ''substantial and representative complement,'' in an appropriate bargaining

> unit are former employees of the predecessor and if the similarities between the two operations manifest a ‘‘‘substantial continuity’ between the enterprises.’’ *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 41–43 (1987), citing, inter alia, *NLRB v. Burns Security Services*, 406 U.S. 272, 280 fn. 4 (1972).

The Supreme Court in *Fall River*, supra at 43, summarized the factors relevant to determining continuity as follows:

> [W]hether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and has basically the same body of customers.
>
> These factors are assessed primarily from the perspective of the employees, that is, ‘‘whether ‘those employees who have been retained will . . . view their job situations as essentially unaltered.’’’ Id., quoting *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 184 (1973). Further, although each factor must be analyzed separately, they must not be viewed in isolation and ultimately, it is the totality of the circumstances which is determinative. See *Fall River*, supra.

Based on this guiding precedent, consideration is made here as to whether the elements required to find successorship are present in this case.

2. The Union’s demand and majority status

A threshold question is whether the Union made a proper demand for recognition on January 30, 1992, at a time when Respondent employed a ‘‘substantial and representative complement’’ of employees in the alleged appropriate unit and the parties agree that it did in their stipulation number 1. See *Hydrolines, Inc*., supra at 421 fn. 31, and *Fall River*, supra. Respondent objected at trial to the General Counsel’s motion amending the description of the appropriate unit in the complaint to exclude mechanics and mechanic helpers pointing for support to the fact that the Union’s demand letter included the two categories in the Union’s list of job categories for whose incumbent employees it demanded recognition from Respondent as their bargaining representative. I accorded Respondent time to do so, but it made no allegation of prejudice should the amendment be allowed, nor thereafter did it seek any time to prepare its case due to the amendment motion, which I granted. For the reasons noted in *Hydrolines*, I find that the Union’s demand for recognition was sufficiently clear to put the Respondent on notice that it was seeking recognition for Respondent’s employees employed in the jobs as described in the Union’s letter and that the Union made a proper demand. (*Hydrolines*, supra at 421.) The parties further agreed there as to the next element for consideration, the Union’s majority status, that the substantial and representative complement consisted of 19 employees in the unit described in the amended complaint, 13 of whom had worked for the predecessor Laidlaw at the facility here. As noted above, the Union represented such employees under its bargaining contract with Laidlaw effective May 1, 1987, through December 31, 1991, thereby satisfying the requirement assuming that alleged jointly employed Silvarole employees are not required to be included in the unit found appropriate.

3. The appropriate bargaining unit

The unit described in the amended complaint is as follows:

> All drivers/spotters, loaders, floor attendants/utility, and laborers/utility employed by Respondent to perform work under contract with the Monroe County Solid Waste Transfer facility, excluding all office clerical employees, guards and supervisors as defined in the Act. [G.C. Exh. 2.]

The parties agreed that the 19 employees Respondent directly employed in these categories shared common wages, hours, benefits, supervision, and other terms and conditions of employment. Respondent entered into the stipulation that such would be an appropriate unit but for the alleged jointly employed Silvarole employees. It argued on brief that such above-described unit should not be found appropriate on the further ground that it excludes mechanics and mechanic helpers, a portion of the employees who were admittedly included in the prior Laidlaw unit. (R. Br. 14.) This raises the question whether a reduction in the unit size or scope is controlling. This latter point is also encapsulated in the broader question whether Respondent and Silvarole were joint employers, for Respondent on this record did not directly employ any mechanics or helpers; relying on Silvarole for such work by the latter’s employees, and the further inquiry whether such alleged joint employer status, even if true, would impinge on finding that the claimed unit is appropriate or not to which issues consideration now turns.

4. The alleged joint employers

Respondent contends that it was a joint employer with Silvarole when it took over operations, so that the Union had no majority in the appropriate unit at the facility when enlarged by the Silvarole employees as described above in the detailed findings. Respondent contends in effect two reasons against the complaint allegations; one that the only appropriate unit on its commencement of operations at the facility included Silvarole employees and therefore the Union’s request was defective and, second, that there was no majority support for the Union in such unit.

Generally, to support a finding of joint employer status, it must be determined that the business entities involved share or codetermine those matters governing the essential terms and conditions of employment, such as hiring, firing, discipline, supervision, and direction. *Southern California Gas Co.*, 302 NLRB 456 (1991); and *Lee Hospital*, 300 NLRB 947 (1990). In *Southern California Gas* the Board adopted the administrative law judge’s decision where he stated,

> In determining whether a joint employer relationship exists, the issue to be resolved is whether the employer exercises, or has the right to exercise, sufficient control over the labor relations policies of the contractor or over the wages, hours and working conditions of the contractor’s employees from which it may be reasonably inferred that the employer is in fact an employer of the contractor’s employees. *Cabot Corporation*, 223

NLRB 1388 (1976); *Syufy Enterprises*, 220 NLRB 738 (1975). Primarily, the question of joint employer status must be decided upon the totality of the facts of the particular case. Supra at 461.

The Board-approved test has also been refined to require for such finding that ''there must be a showing that the [alleged joint] employer *meaningfully* affects matters relating to the employment relationships.'' (Emphasis added.) *International Shipping Assn.*, 297 NLRB 1059 (1990). There, the Board agreed with the finding of no joint employer status where the contract, as here, stated the supplier of services (order fillers) was an independent contractor and, also like here, its work depended on the needs of the employer's plant. Even more significantly, the fact that the supplier supervisor made assignments to supplier employees based on orders received from the employer was found to be no evidence of joint employer relationship, as the employer, it was found, did not thereby make the assignments of work to the supplier's employees. The facts in this respect are on all fours with the facts on which Respondent bases its assertion here of common direction and supervision by Respondent over Silvarole employees at the facility and over the mechanics, for here it is Respondent whose officials notify Silvarole's operations manager as to the number of loads needed to be transported by Silvarole drivers and he then assigns the Silvarole drivers. Not uncommonly, these drivers then drive the assigned loads for Respondent in coordination with the trips involving solely Silvarole work. Furthermore, although Respondent prioritizes its maintenance needs, it is the Silvarole lead mechanic who assigns the work to Silvarole mechanics in a similar fashion to the Silvarole driver assignments and both types of occurrences fail to evidence a joint employer relationship under the above guiding precedent. The record makes plain that the Silvarole drivers—like any others, whether Respondent's or other subcontractors—are present only briefly at the facility when engaged in picking up their assigned trailer loads of trash so the fact that Respondent officials generally supervise operators at the facility—as required by their contract with the county—is immaterial and fails to rise to the level of meaningfully affecting matters relating to the employment relationship. The Silvarole drivers simply pick up the trailer with a Silvarole tractor, visit the scale house to record weight, and leave with a bill of loading identifying Silvarole as the carrier. Respondent of necessity may exercise some implicit or indirect control over the operations of Silvarole at the facility to ensure against disruption of its own operations or to assure it secures the services promised, but this is no basis to find the customer-employer is a joint employer of its contractor's employees; rather whatever management coordination transpired arose in the best interests of both companies. *Southern California Gas*, supra at 461, 462; and *Furniture Distribution Center*, 234 NLRB 751, 752 (1978). The record plainly shows that Respondent exercised no meaningful control over Silvarole employees' labor relations matters, as candidly admitted by its general manager and as fulsomely detailed above in my findings, wherein the autonomy of each firm over its own employees' labor relations only is clearly demonstrated. It is therefore found that the two firms were not joint employers. I note in passing that even if the contrary were true, such would not mandate that only a unit comprising both groups of employees would be appropriate, as a joint employer status does not always, per se, establish such to be true. *Value Village*, 161 NLRB 603 (1966).

Turning to the exclusion of mechanics and their helpers from the unit described above as the appropriate unit the record shows that they are assigned work by the Silvarole lead mechanic, hired by Silvarole, paid by that firm alone, have separate timecard racks and records maintained only by Silvarole, normally work at the 1187 building remote from Respondent's employees except for road calls or repairs at the facility, and work on Silvarole's, Respondent's, or other customers' vehicles. They are paid different benefits from Respondent's employees and Respondent, although it prioritizes its own needs, is not shown by probative evidence to assign them work. I find first that the mere fact they were included in the Laidlaw unit and not in the unit sought by the Union and claimed to be appropriate in the amended complaint is no grounds to support the Respondent's contention against a successorship finding, for such finding is not precluded merely because the entire bargaining unit or operations of the predecessor are not transferred to the new employer. As the Board stated, ''An employer, however, may take over only a part of the operations of the predecessor and still be deemed a successor employer. Also, successorship is not precluded because the entire bargaining unit is not transferred to the new employer.'' *Hydrolines*, supra; *Irwin Industries*, 304 NLRB 78 fn. 4 (1991); *Mondovi Foods Corp.*, 235 NLRB 1080 (1978); and *Helnick Corp.*, 301 NLRB 128 (1991). This is also true given the mechanics' and helpers' geographic separation from the Respondent's facility based unit employees. *Stewart Granite Enterprises*, 255 NLRB 569, 573 (1981). I further find that as solely employees of the separate employer Silvarole, the mechanics and mechanic helpers are properly excluded from a unit limited to Respondent's own employees. Given the parties' agreement number 3 and the record facts establishing that the employees therein share a close community of employment interests, I further find the following unit, as set forth in the amended complaint to be appropriate:

> All drivers/spotters, loaders, floor attendants/utility, and laborers/utility employed by Respondent to perform work under contract with the Monroe County Solid Waste Transfer facility, excluding all office clerical employees, guards and supervisors as defined in the Act.

5. The continuity between operations

Addressed now as the remaining element to establish successorship is the question whether the similarity between the Laidlaw operations and those of Respondent manifest a substantial continuity between the enterprises. The parties stipulation 3, supported by the record, satisfies this requirement for there they expressly stipulate to such finding in specific detail. I agree with the General Counsel's assertion on brief that the record is barren of any basis to conclude employees' perceptions concerning their job situation and the appropriateness of the Union as their collective-bargaining

representative changed when Respondent commenced operations. (G.C. Br. 14.)[2]

Based on the foregoing, I find that Respondent is the successor to Laidlaw and that since February 3, 1992, by refusing the Union's demand for recognition dated January 30, 1992, Respondent has violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

1. Solid Waste Services, Inc. is the successor to Laidlaw Waste Systems.

2. International Union of Operating Engineers, Local Union No. 832 has been and is the exclusive representative of all employees in the appropriate unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. The following employees constitute a unit that is appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All drivers/spotters, loaders, floor attendants/utility, and laborers/utility employed by Respondent to perform work under contract with the Monroe Count Solid Waste Transfer facility, excluding all office clerical employees, guards and supervisors as defined in the Act.

4. By failing and refusing to recognize and bargain collectively with the Union as the exclusive representative of the Respondent's employees in the appropriate unit since February 3, 1992, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union, I shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Solid Waste Services, Inc., d/b/a J. P. Mascaro & Sons, Inc., Rochester, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with International Union of Operating Engineers, Local Union No. 832 as the exclusive bargaining representative of the employees in the bargaining unit described below.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All drivers/spotters, loaders, floor attendants/utility, and laborers/utility employed by Respondent to perform work under contract with the Monroe County Solid Waste Transfer facility, excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Rochester, New York, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 3 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] In this connection, I find that the change in supervisors after Respondent assumed operations is, under the totality of circumstances supporting the finding of a continuity between operations here, immaterial. *Hydrolines*, supra.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain with International Union of Operating Engineers, Local Union No. 832 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All drivers/spotters, loaders, floor attendants/utility, and laborers/utility employed by us to perform work under contract with the Monroe County Solid Waste Transfer facility, excluding all office clerical employees, guards and supervisors as defined in the Act.

SOLID WASTE SERVICES, INC.